

REMARKS

Applicant has amended claims 12, 14, 18-21, 23-26 and 31, cancelled claims 15-17 and 29 and added new claims 32-42. These changes have been made to place the claims in better form for examination and to further obviate the 35 U.S.C. §§102(b), 103(a), and 112 rejections as set forth in the Final Office Action dated April 14, 2011. It is believed that none of these amendments constitute new matter. It is submitted that these amendments obviate the rejections. Withdrawal of these rejections is respectfully requested.

The Examiner has rejected claims 12, 14-21, 23-26, 29 and 31 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has amended claims 12, 18 and 23 as suggested by the Examiner, further amended claims 14, 19-21, 24-26, and 31 for clarification and to place the claims in better form for examination, and cancelled claims 15-17 and 29. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 12, 14-21, 23-26, 29 and 31 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Applicant has amended claims 12, 14, 18-21, 23-26 and 31, and cancelled claims 15-17 and 29. The Examiner states that the Specification only provides support for selfing the F₁ generation and does not provide support for intercrossing the F₁ generation. Applicant refers the Examiner to page 6, lines 23-26, where it states “After selection of (a) parent plant(s) comprising the *y* allele and the *cl* allele, a plant with the genotype *yy;clcl* can easily be obtained by using classical breeding techniques generally known to the person skilled in the art.” Subsequently, an example is provided wherein the F₁ is selfed; however, this example is not intended to limit the claimed invention but is an example provided to further illustrate how the claimed invention may be obtained. Intercrossing is a classical breeding technique known to those skilled in the art, whereby one breeds two strains having a common ancestry with one another. Selfing an F₁ plant having the genotype *Yy;CLcl* or intercrossing two F₁ siblings each having the genotype *Yy;CLcl* both result in offspring wherein 1/16 will have the desired *yy;clcl* genotype. Therefore, one of ordinary skill in the art would have understood Applicant to be in possession of the claimed invention at the time of filing. Withdrawal of this rejection is respectfully requested.

The Examiner states that claim 18 currently reads on 1.5 times and 2.85 times of greater than 5.0g/kg fresh weight, which is at least 7.5g/kg and 14.25g/kg [sucrose], and similarly for

claim 23 [ascorbic acid], and that these values are not supported by the originally filed disclosure. Claim 12 has been amended to recite that the multiple is in comparison to plants of the genus *Capsicum* having at least one dominant *CL* allele. Applicant refers the Examiner to page 10, where in Table 1 examples are given for plants of the genotype *yy;clcl* having a range of sucrose content between 5.9 to 6.6g/kg fresh weight, compared to plants having a dominant *CL* allele (designated Special, Oblix, and Fiesta; please refer to page 9, lines 24-28 for respective genotypes), which have a range of sucrose content between 2.1 to 4.4g/kg fresh weight. Thus, the Specification provides support for the claimed invention having a sucrose content between 1.3 (5.9/4.4) and 3.1 (6.6/2.1) times higher than plants of the genus *Capsicum* having at least one dominant *CL* allele. For similar reasons, the Specification provides support for the claimed invention having an ascorbic acid content between 1.2 and 1.9 times higher than plants of the genus *Capsicum* having at least one dominant *CL* allele (Table 2, page 12). Applicant has amended claims 18 and 23 to reflect the correct values. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 12, 14-18, 23 and 29 under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. Applicant has amended claims 12, 14, 18-21, 23-26 and 31, and cancelled claims 15-17, and 29. Claim 12 has been amended to recite that the multiple is in comparison to plants of the genus *Capsicum* having at least one dominant *CL* allele. Applicant refers the Examiner to page 10, where in Table 1 examples are given for plants of the genotype *yy;clcl* having a range of sucrose content between 5.9 to 6.6g/kg fresh weight, compared to plants having a dominant *CL* allele (designated Special, Oblix, and Fiesta; please refer to page 9, lines 24-28 for respective genotypes), which have a range of sucrose content between 2.1 to 4.4g/kg fresh weight. Thus, the Specification provides support for the claimed invention having a sucrose content between 1.3 (5.9/4.4) and 3.1 (6.6/2.1) times higher than plants of the genus *Capsicum* having at least one dominant *CL* allele. For similar reasons, the Specification provides support for the claimed invention having an ascorbic acid content between 1.2 and 1.9 times higher than plants of the genus *Capsicum* having at least one dominant *CL* allele (Table 2, page 12). Applicant has amended claims 18 and 23 to reflect the correct values. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 12, 14-21, 23-26, 29 and 31 under 35 U.S.C. §102(b) as anticipated by, or in the alternative, under 35 U.S.C. 103(a) as obvious over Smith, P.G. (*J.*

Hered., Vol. 41, No. 5, May 1950, pp 138-140) in light of Shifriss et al. (*Euphytica*, Vol. 60, 1992, pp 123-126), Park et al. (*Korean J. Plant Path.*, Vol. 5, No. 3, 1989, pp 262-270) and Osuna-Garcia et al. (*J. Ag. Food Chem.*, Vol. 46, No. 12, Dec. 1998, pp. 5093-5096). Applicant has amended claims 12, 14, 18-21, 23-26 and 31, and cancelled claims 15-17 and 29. Applicant has amended claim 12 to limit the claimed invention to green pepper varieties Evergreen 7181 or Evergreen 6203. Applicant submits that the references alone or in combination do not teach green pepper varieties Evergreen 7181 and Evergreen 6203. Additionally, the rejection relies on the inherent properties of the plant described in Smith to anticipate the claimed levels of sucrose and ascorbic acid. According to *Ex party Levy*, as discussed in MPEP 2112 (IV.), "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." There is nothing in the references to lead one of ordinary skill in the art to conclude that the fruit of Smith must necessarily have the sucrose or ascorbic acid content of the specific ranges recited in the claims. This is especially apparent in view of the fact that the claims recite producing a fruit from a plant produced by crossing a parental plant from one of two specific lines, and Smith does not disclose these parental plants. Therefore the standard of inherency has not been met, and the references alone, or in combination, do not teach all the limitations of the claims. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 12, 14-21, 23-26, 29, and 31 under 35 U.S.C. §102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Shifriss et al. (*Euphytica*, Vol. 60, 1992, pp 123-126) in light of Park et al. (*Korean J. Plant Path.*, Vol. 5, No. 3, 1989, pp 262-270) and Osuna-Garcia et al. (*J. Ag. Food Chem.*, Vol. 46, No. 12, Dec. 1998, pp. 5093-5096). Applicant has amended claims 12, 14, 18-21, 23-26 and 31, and cancelled claims 15-17 and 29. Applicant has amended claim 12 to limit the claimed invention to green pepper varieties Evergreen 7181 or Evergreen 6203. Applicant submits that the references alone or in combination do not teach green pepper varieties Evergreen 7181 and Evergreen 6203. Additionally, the rejection relies on the inherent properties of the plant described in Shifriss to anticipate the claimed levels of sucrose and ascorbic acid. According to *Ex party Levy*, as discussed in MPEP 2112 (IV.), "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the

determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” There is nothing in the references to lead one of ordinary skill in the art to conclude that the fruit of Shifriss must necessarily have the sucrose or ascorbic acid content of the specific ranges recited in the claims. This is especially apparent in view of the fact that the claims recite producing a fruit from a plant produced by crossing a parental plant from one of two specific lines, and Smith does not disclose these parental plants. Therefore the standard of inherency has not been met, and the references alone, or in combination, do not teach all the limitations of the claims. Withdrawal of this rejection is respectfully requested.

In view of the above amendments and remarks, it is submitted that the claims satisfy the provisions of 35 U.S.C. §§102(b), 103(a) and 112. Reconsideration of this application and a notice of allowance are requested.

RESPECTFULLY SUBMITTED,					
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